

IC 20-47-2

Chapter 2. Public Holding Companies

IC 20-47-2-1

Application

Sec. 1. This chapter does not apply to a:

- (1) school corporation;
- (2) joint school corporation; or
- (3) consolidated school corporation;

the schools of which do not have a total enrollment of at least two hundred fifty (250) pupils.

As added by P.L.2-2006, SEC.170.

IC 20-47-2-2

"Capital actually invested"

Sec. 2. As used in this chapter, "capital actually invested" includes the following amounts expended by a lessor corporation:

- (1) Organization and incorporation expenses.
- (2) Financing costs.
- (3) Carrying charges.
- (4) Legal fees.
- (5) Architects' fees.
- (6) Contractors' fees.
- (7) Reasonable costs and expenses incidental thereto.

As added by P.L.2-2006, SEC.170.

IC 20-47-2-3

"Lessor corporation"

Sec. 3. As used in this chapter, "lessor corporation" means a corporation described in section 6 of this chapter.

As added by P.L.2-2006, SEC.170.

IC 20-47-2-4

"School building"

Sec. 4. As used in this chapter, "school building" means a building used as a part of or in connection with the operation of a school and includes the:

- (1) site for the building;
- (2) equipment for the building; and
- (3) appurtenances to the building, such as heating facilities, water supply, sewage disposal, landscaping, walks, drives, and playgrounds.

However, the term does not include a building that is designed for and to be used exclusively for interschool athletic contests.

As added by P.L.2-2006, SEC.170.

IC 20-47-2-5

Powers; lease of school building

Sec. 5. (a) Subject to subsection (b), a school corporation may lease a school building or buildings for the use of:

- (1) the school corporation; or
- (2) a joint or consolidated school district of which the school corporation is a part or to which it contributes;

for a term not to exceed thirty (30) years.

(b) A school corporation may not enter into a lease under this section unless:

- (1) a petition for the lease signed by at least fifty (50) patrons of the school corporation has been filed with the governing body of the school corporation; and
- (2) the governing body, after investigation, determines that a need exists for the school building and that the school corporation cannot provide the necessary funds to pay the cost or its proportionate share of the cost of the school building or buildings required to meet the present needs.

(c) If two (2) or more school corporations propose to jointly enter into a lease under this section, joint meetings of the governing bodies of the school corporations may be held, but action taken at a joint meeting is not binding on any of those school corporations unless approved by a majority of the governing body of those school corporations. A lease executed by two (2) or more school corporations as joint lessees must:

- (1) set out the amount of the total lease rental to be paid by each lessee, which may be as agreed upon; and
- (2) provide that:
 - (A) there is no right of occupancy by any lessee unless the total rental is paid as stipulated in the lease; and
 - (B) all rights of joint lessees under the lease are in proportion to the amount of lease rental paid by each lessee.

As added by P.L.2-2006, SEC.170.

IC 20-47-2-6

Qualifications of lessor corporation; permissible interest; return of capital; recovery of expenses

Sec. 6. (a) A school corporation or corporations may enter into a lease under this chapter only with a corporation organized under Indiana law solely for the purpose of acquiring a site, erecting a suitable school building or buildings on that site, leasing the building or buildings to the school corporation or corporations, collecting the rentals under the lease, and applying the proceeds of the lease in the manner provided in this chapter.

(b) A lessor corporation described in subsection (a):

- (1) must, except as provided in subdivision (2), act entirely without profit to the lessor corporation or its officers, directors, and stockholders;
- (2) is entitled to the return of capital actually invested, plus interest or dividends on outstanding securities or loans, not to exceed five percent (5%) per annum and the cost of maintaining the lessor corporation's corporate existence and keeping its property free of encumbrance; and
- (3) upon receipt of any amount of lease rentals exceeding the

amount described in subdivision (2), apply the excess funds to the redemption and cancellation of the lessor corporation's outstanding securities or loans as soon as may be done.

As added by P.L.2-2006, SEC.170.

IC 20-47-2-7

Required terms of lease agreement

Sec. 7. (a) A lease entered into under this chapter must include the following provisions:

(1) An option for the school corporation or corporations to renew the lease for a further term on similar conditions.

(2) An option for the school corporation or corporations to purchase the property covered by the lease after six (6) years from the execution of the lease and before the expiration of the term of the lease, on the date or dates in each year as may be fixed in the lease. The purchase price:

(A) must be equal to the amount required to enable the lessor corporation owning the property to liquidate by paying all indebtedness, with accrued and unpaid interest, redeeming and retiring any stock at par, and paying the expenses and charges of liquidation; and

(B) may not exceed the capital actually invested in the property by the lessor corporation represented by outstanding securities or existing indebtedness, plus the cost of transferring the property and liquidating the lessor corporation.

(b) A lease entered into under this chapter may not provide or be construed to provide that a school corporation is under any obligation to purchase a leased school building or buildings, or under any obligation in respect to any creditors, shareholders, or other security holders of the lessor corporation.

As added by P.L.2-2006, SEC.170.

IC 20-47-2-8

Lessor corporation; submission of preliminary plans

Sec. 8. (a) A lessor corporation proposing to build a school building or buildings must submit preliminary plans, specifications, and estimates for the building or buildings to the lessee or lessees before the execution of the lease. Final plans and specifications must be submitted to the state department of health, state fire marshal, and other agencies designated by law to pass on plans and specifications for school buildings. The final plans and specifications described in this subsection must be approved by the approving agencies in writing and by the lessee or lessees before the construction of the school building or school buildings.

(b) IC 4-21.5 does not apply to the formulation, issuance, or administrative review of an approval by an agency under subsection (a). However, IC 4-21.5 does apply to the judicial review and civil enforcement of an approval by an agency under subsection (a).

As added by P.L.2-2006, SEC.170.

IC 20-47-2-9**Permissible provisions of lease; payment of taxes; insurance**

Sec. 9. A lease entered into under this chapter may provide that as part of the lease rental for the school building or buildings the lessee or lessees shall:

- (1) pay all taxes and assessments levied against or on account of the leased property;
- (2) maintain insurance on the leased property for the benefit of the lessor corporation; and
- (3) assume all responsibilities for repair and alterations of the leased property during the term of the lease.

As added by P.L.2-2006, SEC.170.

IC 20-47-2-10**Lease preceding acquisition of land**

Sec. 10. A school corporation or corporations may, in anticipation of the acquisition of a site and the construction and erection of a school building or buildings, enter into a lease with a lessor corporation before the actual acquisition of the site and the construction and erection of the building or buildings. However, a lease entered into under this section may not provide for the payment of any lease rental by the lessee or lessees until the building or buildings are ready for occupancy, at which time the stipulated lease rental may begin. The contractor must furnish to the lessor corporation a bond satisfactory to the lessor corporation conditioned upon the final completion of the building or buildings within the period specified in the contract.

As added by P.L.2-2006, SEC.170.

IC 20-47-2-11**Required public hearing; notice of lease terms**

Sec. 11. (a) After the lessor corporation and the school corporation or corporations have agreed upon the terms and conditions of a lease proposed to be entered into under this chapter, and before the final execution of the lease, a notice shall be given by publication to all persons interested of a hearing or joint hearing to be held before the governing body or governing bodies of the school corporation or corporations authorized to approve the lease. The hearing must be not earlier than:

- (1) ten (10) days after publication of the notice, if new construction is proposed; or
 - (2) thirty (30) days after publication of the notice, if improvement or expansion is proposed.
- (b) The notice required by subsection (a) must:
- (1) be published one (1) time in:
 - (A) a newspaper of general circulation printed in the English language in the school corporation;
 - (B) a newspaper described in clause (A) in each school corporation if the proposed lease is a joint lease; or
 - (C) if no such paper is published in the school corporation,

- in any newspaper of general circulation published in the county;
- (2) name the date, time, and place of the hearing; and
 - (3) set forth a brief summary of the principal terms of the lease agreed upon, including the:
 - (A) location of the property to be leased;
 - (B) name of the proposed lessor corporation;
 - (C) character of the property to be leased;
 - (D) rental to be paid; and
 - (E) number of years the lease is to be in effect.

The cost of publishing the notice shall be borne by the lessor corporation.

(c) The proposed lease, drawings, plans, specifications, and estimates for the school building or buildings must be available for inspection by the public during the ten (10) day or thirty (30) day period described in subsection (a) and at the hearing under section 12 of this chapter.

As added by P.L.2-2006, SEC.170.

IC 20-47-2-12

Conduct of public hearing; lease authorization procedures

Sec. 12. (a) At the hearing, all interested persons have a right to be heard upon the necessity for the execution of the proposed lease and whether the rental to be paid to the lessor corporation under the proposed lease is a fair and reasonable rental for the proposed building. The hearing may be adjourned to a later date or dates.

(b) Within thirty (30) days following the termination of the hearing, the governing body or bodies of the school corporation or corporations may by a majority vote of all members of the governing body or bodies:

- (1) authorize the execution of the proposed lease as originally agreed upon; or
- (2) make modifications to the proposed lease that are agreed upon with the lessor corporation.

However, the lease rentals as set out in the published notice may not be increased in any modifications approved under subdivision (2).

As added by P.L.2-2006, SEC.170.

IC 20-47-2-13

Notice of signing of lease; appeal

Sec. 13. (a) If the execution of the lease as originally agreed upon or as modified by agreement is authorized by the governing body or bodies of the school corporation or corporations, the governing body shall give notice of the signing of the lease by publication one (1) time in:

- (1) a newspaper of general circulation printed in the English language in the school corporation;
- (2) a newspaper described in subdivision (1) in each school corporation if the proposed lease is a joint lease; or
- (3) if no such newspaper is published in the school corporation,

in any newspaper of general circulation published in the county.

(b) Within thirty (30) days after the publication of notice under subsection (a), fifty (50) or more taxpayers in the school corporation or corporations who:

(1) will be affected by the proposed lease; and

(2) are of the opinion that:

(A) necessity does not exist for the execution of the lease; or

(B) the proposed rental provided for in the lease is not a fair and reasonable rental;

may file a petition in the office of the county auditor of the county in which the school corporation or corporations are located. The petition must set forth the taxpayers' objections to the lease and facts showing that the execution of the lease is unnecessary or unwise or that the lease rental is not fair and reasonable, as the case may be.

(c) Upon the filing of a petition under subsection (b), the county auditor shall immediately certify a copy of the petition, together with any other data that is necessary to present the questions involved, to the department of local government finance. Upon receipt of the certified petition and data, if any, the department of local government finance shall fix a time, date, and place for the hearing of the matter, which may not be less than five (5) nor more than thirty (30) days thereafter. The department of local government finance shall:

(1) conduct the hearing in the school corporation or corporations, or in the county where the school corporation or corporations are located; and

(2) give notice of the hearing to the members of the governing body or bodies of the school corporation or corporations, and to the first fifty (50) taxpayers who signed the petition under subsection (b) by a letter signed by the commissioner or deputy commissioner of the department of local government finance, and enclosed with full prepaid postage addressed to the taxpayer petitioners at their usual place of residence, at least five (5) days before the hearing.

The decision of the department of local government finance on the appeal, upon the necessity for the execution of the lease and as to whether the rental is fair and reasonable, is final.

As added by P.L.2-2006, SEC.170.

IC 20-47-2-14

Limitation on time to file appeal

Sec. 14. An action to contest the validity of the lease or to enjoin the performance of any of the terms and conditions of the lease may not be instituted at any time later than:

(1) thirty (30) days after publication of notice of the execution of the lease by the governing body or bodies of the school corporation or corporations; or

(2) if an appeal has been taken to the department of local government finance, thirty (30) days after the decision of the department of local government finance.

As added by P.L.2-2006, SEC.170.

IC 20-47-2-15

Acquisition of land for building site; sale to lessor corporation

Sec. 15. The lessor corporation shall acquire, own, and hold in fee simple the land on which a school building or buildings are to be erected under this chapter. A school corporation that proposes to lease such a school building, either alone or jointly with another school corporation, and owns the land on which it desires that the building or buildings be erected may sell and transfer that land to the lessor corporation in fee simple, subject to the following conditions:

(1) Before the sale may take place, the governing body of the school corporation must file a petition with the circuit court of the county in which the school corporation is located, requesting the appointment of:

(A) one (1) disinterested freeholder of the school corporation as an appraiser; and

(B) two (2) disinterested appraisers licensed under IC 25-34.1;

who are residents of Indiana to determine the fair market value of the land. One (1) of the appraisers described in clause (B) must reside not more than fifty (50) miles from the land.

(2) Upon their appointment, the three (3) appraisers shall proceed to fix the fair market value of the land and shall report the amount fixed to the circuit court within two (2) weeks after their appointment.

(3) The school corporation may sell the land to the lessor corporation for an amount not less than the amount fixed as the fair market value by the three (3) appraisers, which shall be paid in cash upon delivery of the deed by the school corporation to the lessor corporation. However, if the land was acquired by the school corporation within three (3) years immediately preceding the date of the filing of the petition with the circuit court, the land may not be sold for an amount less than the amount paid by the school corporation for the land.

As added by P.L.2-2006, SEC.170. Amended by P.L.113-2006, SEC.15.

IC 20-47-2-16

Lessor corporation; sale of bonds and securities; mortgage bonds

Sec. 16. (a) A corporation qualifying as a lessor corporation under this chapter may, in furtherance of its corporate purposes, issue and sell stock, bonds, and other securities. Mortgage bonds issued by a lessor corporation that are a first lien on the leased property are legal and proper investments for state banks and trust companies, insurance companies, and fiduciaries. Bonds issued under this section may be callable upon notice in the manner provided in the mortgage indenture, at premiums up to five percent (5%) with accrued and unpaid interest.

(b) Stocks, bonds, and other securities issued by a lessor corporation shall be sold in the manner provided in IC 5-1-11. However, the notice of sale shall be published in the manner required

for bonds of the county in which the school building is located.

(c) Shares of common stock issued by a lessor corporation are not required to be sold at a public sale. The price of the shares shall be determined by the lessor corporation, but the price of the shares may not exceed the lesser of:

- (1) the necessary expense of incorporation, preparation of preliminary plans and specifications, and other preliminary expense necessary to the preparation of the proposed lease and publication of notice of the lease; or
- (2) a sum equal to five percent (5%) of the proposed cost of the building or buildings.

(d) None of the costs of construction of the building, the purchase of the equipment for the building, or the incidental expenses in connection with the construction or purchase may be paid from stocks, bonds, or securities of the lessor corporation unless those stocks, bonds, or securities are sold at public sale as provided in this section.

(e) The approval of the securities commissioner is not required in connection with the issuance and sale of any stocks, bonds, or other securities of the lessor corporation.

(f) A part of the proceeds from stocks, bonds, or other securities sold at public sale may be used to reimburse the incorporators or any other person or persons who may have advanced funds for essential preliminary expenses as provided for in this section, with interest on the amount reimbursed not to exceed five percent (5%).

As added by P.L.2-2006, SEC.170.

IC 20-47-2-17

Refunding of outstanding bonds; appeal

Sec. 17. (a) As used in this section, "bonds" includes bonds, debentures, or other evidences of indebtedness.

(b) A lessor corporation having outstanding bonds that by their terms are redeemable before their maturities may issue bonds in the manner provided by section 16 of this chapter to refund the outstanding bonds. The refunding bonds may be issued in an amount not exceeding the sum of:

- (1) the principal amount of the outstanding bonds;
- (2) any premium required to be paid upon redemption of the outstanding bonds; and
- (3) the estimated expenses to be incurred in connection with the issuance of the refunding bonds.

(c) The sum of the net interest cost to the lessor corporation of the refunding bonds plus the premium required to be paid in connection with the redemption of the outstanding bonds and the estimated expenses to be incurred in connection with the issuance of the refunding bonds may not exceed the total interest that would have been payable by the lessor corporation on the bonds being refunded from the date of redemption to the maturity of the bonds being refunded. Net interest cost on the refunding bonds is the amount determined by computing the total interest on all the refunding bonds

to their maturities and deducting from that amount the premium bid, if any.

(d) Refunding bonds issued under this section:

- (1) are legal and proper investments;
- (2) are exempt from taxation; and
- (3) may be sold without registration with or approval of the securities division of the office of the secretary of state or securities commissioner;

in the same manner, under the same conditions, and subject to the same limitations as any other bonds issued by lessor corporations under section 16 of this chapter. However, no proceedings or actions by the lessee nor approval by any board, commission, or agency are required in connection with the refunding, and the refunding authorized in this section does not affect the obligation of the lessee to pay the lease rental under the lease of the building or buildings.

(e) An action to contest the validity of refunding bonds issued under this section may not be brought after the fifteenth day following the receipt of bids for the bonds.

(f) In connection with the issuance of refunding bonds, the lessee school corporation or school corporations may enter into an amendment to the lease with the lessor corporation providing for an extension of the time set forth in the lease before the option of the lessee or lessees to purchase may be exercised to a time agreed upon between the lessee school corporation or school corporations and the lessor corporation.

As added by P.L.2-2006, SEC.170.

IC 20-47-2-18

Issuance of bonds; use of proceeds to refund outstanding bonds and make improvements; appeal

Sec. 18. (a) As used in this section, "bonds" means bonds, debentures, or other evidences of indebtedness.

(b) As used in this section, "improvement" or "improvements" means one (1) or more of the following:

- (1) Construction of a school building.
- (2) An addition to a school building owned by a lessor corporation or owned by the school corporation to which a lessor corporation has leased property under this chapter, and any remodeling incidental to that addition.
- (3) Remodeling of or construction of appurtenances to a school building owned by a lessor corporation.

(c) A lessor corporation having outstanding bonds that by their terms are redeemable before their maturities may issue bonds in the manner provided under section 16 of this chapter to refund the outstanding bonds and construction of improvements.

(d) Refunding and improvement bonds issued under this section:

- (1) are legal and proper investments;
- (2) are exempt from taxation; and
- (3) may be sold without registration with or approval of the securities division of the office of the secretary of state or the

securities commissioner;
in the same manner, under the same conditions, and subject to the same limitations as any other bonds issued by lessor corporations under section 16 of this chapter.

(e) In connection with the issuance of refunding and improvement bonds, the lessee school corporation or school corporations may enter into an amendment to the lease with the lessor corporation providing for:

- (1) an extension of the time set forth in the lease before the option of the lessee or lessees to purchase may be exercised to a time agreed upon between the lessee school corporation or school corporations and the lessor corporation;
- (2) an extension of the term of the lease, not to exceed ten (10) years, to include the improvements in the description of the leased property; and
- (3) increased lease rental payments after the completion of the improvements.

(f) No proceedings or actions by the lessee nor approval by any board, commission, or agency are required in connection with a refunding under this section, and the refunding does not affect the obligation of the lessee to pay the lease rental under the lease of the building or buildings. However, all provisions, restrictions, and limitations of this chapter that are not inconsistent with this section, including the petition of school patrons, notice of hearing, hearing, notice of execution, and right to file an objecting petition, apply to an amendment of the lease increasing the lease rental payments as if the amendment were an original lease.

(g) An action to contest the validity of refunding and improvement bonds issued under this section may not be brought after the fifteenth day following the receipt of bids for the bonds.

As added by P.L.2-2006, SEC.170.

IC 20-47-2-19

Option to purchase; bonds to fund purchase

Sec. 19. A school corporation that decides to exercise an option to purchase a school building under this chapter may issue general obligation bonds to procure funds to pay the cost of acquisition. General obligation bonds issued under this section must be authorized, issued, and sold in the manner provided for the authorization, issuance, and sale of bonds by school corporations for school building purposes.

As added by P.L.2-2006, SEC.170.

IC 20-47-2-20

Required levy; payment of obligations

Sec. 20. A school corporation that executes a lease under this chapter shall annually appropriate from its debt service fund or general fund an amount sufficient to pay the lease rental required under the lease. The appropriation is reviewable by other bodies vested by law with such authority to ascertain that the specified

amount is sufficient to meet the lease rental required under the lease. The first specific appropriation shall be made at the first budget period following the date of the execution of the lease, and the first annual appropriation must be sufficient to pay the estimated amount of the first annual lease rental payment to be made under the lease. Thereafter, the annual appropriations provided for in this section shall be made, and payments shall be made from the debt service fund.

As added by P.L.2-2006, SEC.170.

IC 20-47-2-21

Exemption of lessor corporation property from taxes

Sec. 21. Property owned by a lessor corporation entering into a lease with a school corporation or corporations under this chapter, and all stock and other securities (including the interest or dividends) issued by a lessor corporation, are exempt from all state, county, and other taxes, except the financial institutions tax (IC 6-5.5) and inheritance taxes (IC 6-4.1).

As added by P.L.2-2006, SEC.170.

IC 20-47-2-22

Statutory construction; supplemental legislation; limitation of application of other laws

Sec. 22. This chapter shall be construed as being supplemental to all other laws covering the acquisition, use, and maintenance of school buildings by school corporations. However, as to school buildings constructed, acquired, leased, or purchased under this chapter, it is not necessary to comply with other laws concerning the acquisition, use, and maintenance of school buildings by school corporations except as specifically required in this chapter.

As added by P.L.2-2006, SEC.170.

IC 20-47-2-23

Termination of lease; disposition of surplus revenues

Sec. 23. (a) Upon the termination of a lease entered into under this chapter, the lessor corporation shall return to the school corporation any money held by the lessor corporation that exceeds the amount needed to retire bonds issued under this chapter and to dissolve the lessor corporation.

(b) A school corporation shall deposit the money received under subsection (a) in its debt service fund or capital projects fund.

As added by P.L.2-2006, SEC.170.